

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMY LEE VERNON, Jr.,

Plaintiff - Appellant,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, et. al.,

Defendants -
Appellants.

No. 2:23-cv-01829-DJC-AC

ORDER

Plaintiff, a state prisoner proceeding in forma pauperis, filed a complaint in diversity jurisdiction on August 25, 2023. (ECF Nos. 1, 9.) Defendants moved to dismiss. (ECF Nos. 18, 24.) On April 29, 2024, the Magistrate Judge issued Findings and Recommendations recommending that this action be dismissed with leave to amend because all of Plaintiff's claims were preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sections 1001 et. seq. (ECF No. 28.) The Findings and Recommendations were adopted by this Court. (ECF No. 33.)

The Plaintiff filed a Second Amended Complaint on June 24, 2024. (ECF No. 34.) Defendants again moved to dismiss. (ECF No. 36.) The Magistrate Court issued Findings and Recommendations recommending that this action be

1 dismissed without leave to amend because the defects in the complaint could not be
2 cured. (See ECF No. 40.) This Court adopted the Findings and Recommendations,
3 and the action was dismissed without leave to amend.¹ (ECF No. 41.) Judgement was
4 subsequently entered on December 20, 2024. (ECF No. 44.)

5 On January 2, 2025, Plaintiff filed a Notice of Appeal. (ECF No. 45.) The Ninth
6 Circuit Court of Appeals referred this matter back to this Court on January 8, 2025, for
7 the limited purpose of determining whether in forma pauperis status should continue
8 on appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 48.)

9 The Federal Rules of Appellate Procedure provide as follows:

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11 [A] party who has been permitted to proceed in an action
12 in the district court in forma pauperis . . . may proceed on
13 appeal in forma pauperis without further authorization
14 unless . . . the district court shall certify that the appeal is
otherwise not entitled so to proceed

15 Fed. R. App. P. 24(a)(3). After review of the record herein, the Court finds that
16 Plaintiff's appeal is frivolous and not taken in good faith.

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's in forma pauperis status is
18 revoked. See Fed. R. App. P. 24(a)(3); see also *Hooker v. American Airlines*, 302 F.3d
19 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where
20 there district court finds the appeal to be frivolous).

21
22 Dated: January 22, 2025



23 THE HONORABLE DANIEL J. CALABRETTA
24 UNITED STATES DISTRICT JUDGE
25
26

27 ¹ Plaintiff filed Objections to the Findings and Recommendations (ECF No. 41) which were fully
28 considered by the Court in making its decision to adopt the Findings and Recommendations and
dismiss this action (see ECF No. 43).